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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 10/710,607  | 07/23/2004  | Sun Ran              | 49487-5                 | 4606             |
| 23971   | 7590        | 11/01/2005           | EXAMINER                |                  |
| BENNETT JONES<br>C/O MS ROSEANN CALDWELL<br>4500 BANKERS HALL EAST<br>855 - 2ND STREET, SW<br>CALGARY, AB T2P 4K7<br>CANADA |             |                      | GHERBI, SUZETTE JAIME J |                  |
|   |             | ART UNIT             |                         | PAPER NUMBER     |
|   |             | 3738                 |                         |                  |
| DATE MAILED: 11/01/2005   |             |                      |                         |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                  |
|------------------------------|-------------------------------|------------------|
| <b>Office Action Summary</b> | Application No.               | Applicant(s)     |
|                              | 10/710,607                    | RAN, SUN         |
|                              | Examiner<br>Suzette J. Gherbi | Art Unit<br>3738 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 August 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-6, 8, 10-13, 15-17 and 19 is/are rejected.  
 7) Claim(s) 7, 9, 14 and 18 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ .  |

## DETAILED ACTION

1. Applicant's amendment dated 8/15/05 has been received in application serial number 10/710,607. Claims 1-19 are pending.

### ***Response to Arguments***

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 4, 6, 8, 10, 13, 15, 17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kelman 2004/0111152. Kelman discloses the invention as currently claimed noting figures 6, 8, and 1-5 comprising: An IOL with an optic (110); a haptic (120); a flexible membrane substantially encircling the optic and connected

between the optic and the haptic *to space the haptic from the optic*; the flexible membrane having a flexibility greater than the optic and greater than the haptic (see [0027]); wherein the membrane can be discontinuous about the optic (see figure. 1b "130"); wherein a plurality of membranes are independent from each other ([004] mentions a second flexible membrane 310); wherein the optic is "pie shaped.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 5 11-12, and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Kelman in view of Kelman 4,463,457. Kelman '2004/0111152 has been disclosed above however Kelman does not specify the terms *frustconical* (for the membrane) or *frog leg shaped* for the shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made to recognize that the flexible membrane of Kelman 2004/0111152 can assume a frustoconical shape during flexation as illustrated in figure 9. Kelman 2004/0111152 also does not specify that the haptics are frog leg shaped. Kelman 4, 463,457 illustrates this termed shape. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the haptics of '457 can be considered "frog legs" because frogs have front leg

portions that resemble the shape of Kelman and by combining them with the device of 2004/0111152 would serve equally as well for anchoring the lens.

***Allowable Subject Matter***

7. Claims 7, 9, 14 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.  
  
Suzette J-j Gherbi  
28 October 2005